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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LARY LIONELL SMITH,

Defendant and Appellant.

B207554

(Los Angeles County
Super. Ct. No. BA326386)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Craig E. Veals, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The information charged Lary Smith with one count of sale, transportation, or offer to sell a controlled substance in violation of Health and Safety Code section 11352, subdivision (a). The information also alleged that (1) Smith had suffered a prior serious or violent felony conviction under Penal Code sections 667, subdivisions (b) through (i), and 1170.12, subdivisions (a) through (d); (2) he had suffered two prior convictions within the meaning of Health and Safety Code section 11370.2, subdivision (a); and (3) he had suffered two prior prison terms within the meaning of section 667.5, subdivision (b).

Pursuant to a plea bargain, on January 18, 2008, Smith entered an open plea of guilty and admitted the truth of the prior conviction allegations after the court assured him that his sentence would not exceed “low-term, double, which is six years at 80 percent.”

On March 24, 2008, the trial court sentenced Smith to the midterm of four years, doubled to eight. The court also imposed various statutory fines and fees and credited Smith with 363 days of presentence custody, consisting of 242 days of actual custody and 121 days of good time/work time credits. Smith filed a timely notice of appeal and a request for a certificate of probable cause, which the trial court denied.

On September 17, 2008, the trial court entered an order correcting the original sentence nunc pro tunc and imposing the agreed maximum of the low term of three years, doubled to six.

At the preliminary hearing, the arresting officer testified that on July 27, 2007, he observed Smith driving a car. The officer recognized Smith from previous traffic stops and knew that Smith was on parole. He also recognized Smith’s passenger as another parolee. He decided to conduct a traffic stop because Smith and his passenger were on parole; he did not observe any traffic violation. In the ensuing parole search of Smith’s car, the officer recovered from inside the trunk of the car “a clear plastic baggy containing four additional baggies within that bag containing large clusters of an

off-white substance resembling cocaine base.” The parties stipulated that lab analysis revealed that the substance in the baggy was 23.63 grams of cocaine base.

In his testimony at the preliminary hearing, the arresting officer also described his previous traffic stops involving Smith, and he also confirmed that Smith had filed a complaint against him in connection with one of those stops. Defense counsel argued that the circumstances showed that the July 27, 2007, traffic stop constituted “harassment” of Smith, rather than pursuit of “a legitimate law enforcement purpose,” and on that ground the defense moved to suppress the evidence obtained in the search. The trial court found on the basis of all of the circumstances (including the testimony of the arresting officer, whom the court found credible) that the search was not harassment or otherwise improper (“I don’t think this is harassment. I don’t think there’s anything wrong with what the officer did.”). The court accordingly denied Smith’s motion to suppress.

We appointed counsel to represent Smith on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking us independently to review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. On November 18, 2008, we directed appointed counsel to advise Smith that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied that appellant’s attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 119, 124.)

DISPOSITION

The judgment is affirmed.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

WEISBERG, J.*

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.